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ABSTRACT

This booklet on sexual harassment in higher education offers a history of the problem, defines sexual harassment, reviews the relevant legal history and recent court cases, and looks at campus policies and procedures. Following an introductory chapter, Chapter 2 looks at legal versus institutional definitions of sexual harassment and factors affecting definitions. This section notes that nearly all institutions define and prohibit sexual coercion while "hostile environment harassment" is less widely proscribed. Chapter 3, on the prevalence of harassment, reviews pertinent research and discusses experiences of female faculty and whether men can be harassed. Chapter 4 addresses the legal context of sexual harassment. This covers university employees, "quid pro quo harassment," hostile environment harassment, federal guidelines, liability, disciplining faculty, and review of several key cases. Chapter 5, on policies and procedures, looks at the extent and nature of policies, union role, grievance arbitration, and responding to complaints. Chapter 6 treats consensual amorous relationships between faculty and students and recommends formally proscribing such relations. Appendixes contain a sexual experiences questionnaire; examples of campus policies from Minnesota State University System, Sand Diego State University, University of Iowa, and University of Wisconsin-Madison; and the National Education Association statement on harassment. (Contains 83 references.) (JB)

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Sexual Harassment in Higher Education: Concepts & Issues

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NATIONAL EDUCATION ASSOCIATION

TO PROMOTE ACADEMIC JUSTICE AND EXCELLENCE

SEXUAL HARASSMENT IN HIGHER EDUCATION
CONCEPTS AND ISSUES

Keith Geiger, President

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She is the co-author of *The Career Psychology of Women* (Academic Press), and the author of numerous articles and chapters on sexual harassment, the most recent of which include two chapters in *Ivory Power: Sex and Gender Harassment on Campus* (SUNY Press) and "Breaking silence: The sexual harassment of women in higher education and the workplace" in the forthcoming *Handbook of the Psychology of Women*. Professor Fitzgerald chairs the Counseling Psychology Program at the University of Illinois, where she is currently Chair of the Chancellor's Committee on the Status of Women.

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Preface

Sexual harassment is a topic that came to the forefront of campus issues in recent years. The Supreme Court decision in *Franklin v. Gwinnett County Public Schools* (February 26, 1992) is a significant ruling under Title IX because it clearly establishes that money damages are available to students and other victims of intentional gender discrimination (in this case sexual harassment). This case gives students the right to sue for compensatory damages under Title IX, and is as significant as the Supreme Court case in *Meritor Savings Bank, FSB v. Vinson (1986)*, which recognized the right of employees to sue for sexual harassment under Title VII. The two cases together give clear warning to institutions to put policies and procedures in place to educate employees about sexual harassment and to halt the practice. NEA filed an *amicus curiae* brief on behalf of the student in the *Franklin* case. The Association continues to be involved in confronting the issues that affect all its members and in protecting the rights of women.

NEA has strong policies regarding sexual harassment. During the 1987–88 academic year, the NEA Standing Committee on Higher Education and the National Council for Higher Education reviewed existing NEA policies on sexual harassment. The two groups also reviewed legal history and the policies that exist in other national organizations and on college and university campuses. Both groups passed resolutions in support of a strong policy to prevent sexual harassment in higher education. The NEA Representative Assembly endorsed and incorporated the resolutions into NEA policy in 1989. NEA's policy states:

SEXUAL HARASSMENT: The National Education Association believes that sexual harassment is a form of sex discrimination or abuse (Resolution I-18, 1988).

The Association further believes that classroom teachers, faculty, staff, and students should be protected from sexual harassment. The Association encourages its affiliates to work with local school districts and institutions of higher education to:

a. **establish strong policies defining and prohibiting sexual harassment**
b. **Develop educational programs designed to help people recognize, understand, prevent, and combat sexual harassment**
c. **Develop and publicize a grievance procedure that encourages the reporting of incidents of sexual**

harassment, resolves complaints promptly, and protects the rights of all parties (Resolution I-18, 1988).

PERSONAL RELATIONSHIPS IN HIGHER EDUCATION: The National Education Association recognizes that in institutions of higher education adult students and educators may establish personal relationships. However, such relationships should be voluntary and not be used to coerce or influence others for personal advantage. Thus, the Association believes that sexual relationships between a faculty member and a student currently enrolled in the faculty member's course, or under the supervision or direction of the faculty member, are unprofessional. The Association urges its affiliates in institutions of higher education to establish strong policies declaring such relationships unprofessional.(Resolution I-20, 1989)

Sexual harassment is a matter of particular concern to the academic community. Students, faculty, and staff must rely on bonds of intellectual trust and dependence. Sexual harassment can damage careers, negatively impact the educational experience of those harassed, and upset the well-being of faculty, staff and students. It also damages the integrity of the academic enterprise. Other negative consequences for campuses include legal liability, possible loss of funding, and damage to the public reputation of the institution.

Education of employees and students is the best preventive medicine for the elimination of sexual harassment. NEA recommends that its affiliates and higher education institutions adopt strong policies rather than wait for a problem to arise before addressing the issue. Workshops should be conducted so that students and employees know their rights and what constitutes "sexual harassment."(See Appendix D)

The following booklet is part of the series, "To Promote Academic Justice and Excellence." It offers a history of the problem, defines sexual harassment, reviews the legal history and recent court cases, and looks at campus policies and procedures. Appendices include samples of campus policies and a questionnaire that can be used on campus to determine the extent of the problem. The booklet is intended as a source book for union leaders, campus administrators, faculty, staff and students. Readers who have comments should write: The Office of Higher Education, National Education Association, 1201 16th Street, N. W., Washington, DC 20036.

Keith Geiger
NEA President

Chapter 1.
Introduction

"Sexual harassment of college students by their professors is a fact of campus life that many educators learn to ignore and, in their silence, to accept." — Dziech & Weiner, 1984

The sexual harassment of students has a long past but a short history.[1] Although women were not admitted to American colleges and universities until Oberlin opened its doors to them in 1837, it seems likely that such harassment has existed as long as there have been women students in an academy dominated by men. Long dismissed as trivial or frivolous when it was acknowledged to exist at all, sexual harassment has recently begun to claim the attention of colleges and universities, as well as the general public. Struggling to come to terms with a problem that threatens their most fundamental self-image, many institutions have wrestled with issues of definition, conducted self-studies, and formulated policies and procedures. Others, seemingly unable to confront the disintegration of their assumptions concerning life in the academy, steadfastly refuse to do so. Contributing to the inability to come to terms with this issue is the peculiar nature of institutions of higher education themselves. Dziech and Weiner (1990) have described how the academic traditions of professorial autonomy, diffuse institutional authority, collegiality and tolerance for eccentricity combine to produce an environment characterized by reluctance to interfere with the behavior of its members, however regrettable such behavior may be. In an era marked by social criticism and legal challenges to their moral authority, universities are finding this posture of tolerant disinterest increasingly difficult to maintain.

The present paper is intended as a contribution to the continuing dialogue concerning sexual harassment in American institutions of higher learning. It begins, as all such discussions must, by examining the question of definition. From there, it moves to consideration of the research concerning the frequency, extent and nature of harassment. We will see that the issue is most properly cast as a women's problem, rather than one of students *per se*. Women faculty and staff are harassed possibly even more extensively than women students; male students, on the other hand — despite a few well-publicized cases — generally are not. The fact that harassment is indeed a women's issue, and cannot be disentangled from more general feminist critiques of academia, has contributed in no small

measure to the discomfort that the university community has experienced when attempting to deal with it. But, it also accounts for its current legal status as impermissible sex discrimination, a status that has led to the formulation of policies and grievance procedures unthinkable only a decade ago. Following an examination of the legal context within which harassment must be understood, the paper examines these polices and procedures and concludes with a discussion of one of the more recent — and controversial — topics in this area, i.e., consensual faculty-student relationships.

Notes

[1]This very descriptive phrase was first suggested by the historian E. G. Boring in his classic *History of Experimental Psychology*.

Chapter 2.
Definitions of Sexual Harassment

"The unnamed should not be taken for the nonexistent."
— MacKinnon, 1979

One of the most persistent problems in the sexual harassment literature has been the absence of a widely agreed-upon definition of the concept, one that was broad enough to comprehend the variety of experiences to which the term refers, and yet specific enough to be of practical use. As MacKinnon (1979) notes, "It is not surprising...that women would not complain of an experience for which there (was) no name. Until 1976, lacking a term to express it, sexual harassment was literally unspeakable, which made a generalized, shared and social definition of it inaccessible" (p. 27). She notes that Working Women United Institute appears to have been the first to use the term, in connection with the case of Carmita Wood. Wood was one of the first women to seek unemployment compensation after leaving a job due to the sexual advances of her superior (*In re Carmita Wood*, 1975). It was also advanced at about the same time by the 1976 Cambridge-based Alliance Against Sexual Coercion and by Brodsky (1976).

The Project on the Education and Status of Women (1978) was among the first to apply the concept to higher education. Referring to sexual harassment as a "hidden issue," it produced a list of various categories of behavior that women students and employees had found objectionable. Till (1980) derived five categories of harassment from a content analysis of incidents described by students who responded to his national survey (see Appendix A), and Phyllis Franklin and her colleagues (Franklin, Moglin, Zatlin-Boring & Angress, 1981) published the first, and still one of the best, scholarly discussions of sexual harassment in the academy.

Despite the explosion of interest, research and litigation that has marked the decade since these discussions first appeared, MacKinnon's "generalized, shared and social definition" remains beyond our reach. This portion of the monograph analyzes legal and institutional definitions of sexual harassment in higher education, and examines research bearing on factors that inhibit consensus in this area.

LEGAL DEFINITIONS

The legal theory of sexual harassment was first articulated in 1979 by Catherine MacKinnon in her influential work, *Sexual Harassment of Working Women*. MacKinnon argued that sexual harassment is a version of sex discrimination (i.e., it is overwhelmingly aimed at women, who would not be at risk if it were not for their sex) and thus is prohibited under Title VII of the Civil Rights Act, which prohibits discrimination in employment.

In 1980, the Equal Employment Opportunity Commission (EEOC) issued its Interim Interpretive Guidelines on Sex Discrimination, which offered the first formal legal definition of sexual harassment. According to EEOC, "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment" (EEOC, 1980).

The EEOC Guidelines suggest, then, that sexual harassment is of two general types: (1) *quid pro quo*, which occurs when an attempt is made to coerce an individual into sexual cooperation by promises of rewards or threats of punishment; and (2) the creation of a *hostile environment*, one which is pervaded by offensive, degrading or intimidating behavior, but where explicit benefits are not conditioned on sexual cooperation. This distinction was first articulated by MacKinnon, who referred to the second type as *conditions of work*.

These definitions and guidelines arose in the employment context and, although defining and prohibiting the harassment of women who work in the academic environment, did not speak directly to the situation of students. Contemporaneously with these developments, however, there arose a similar interpretation of Title IX of the Education Amendments of 1972. Although it has not yet published its own definition, the Office of Civil Rights (OCR), the primary enforcement agency for Title IX, has acknowledged that "Sexual harassment of students is a real and increasingly visible problem of serious

consequences in higher education. . . .Academic institutions must address the problem in order to ensure all students a just and equal learning opportunity" (OCR, 1984). In practice, educational institutions have generally adopted the EEOC Guidelines and extended them to include the situation of students.

INSTITUTIONAL DEFINITIONS

In the decade or so since the legal definition of sexual harassment was first advanced, and particularly since sexual harassment was recognized by the courts as a cause of action under Title IX (*Alexander v. Yale*, 1980), the majority of colleges and universities have developed institutional definitions to guide their policy in this area. In addition, professional and regulatory bodies have issued guidelines for institutions to consider when making decisions about what constitutes sexual harassment in a university setting. Thus, the National Advisory Council on Women's Educational Programs prohibits "the use of authority to emphasize the sexuality or sexual identity of a student in a manner which prevents or impairs that student's full enjoyment of educational benefits, climate or opportunities" [in Till (1980)]. The Project on the Status and Education of Women (1978) of the American Association of Colleges identified the following set of behaviors as objectionable:

- verbal harassment or abuse
- subtle pressure for sexual activity
- sexist remarks about a woman's clothing, body, or sexual activities
- unnecessary touching, patting or pinching
- leering or ogling at a woman's body
- demanding sexual favors accompanied by implied or overt threats concerning one's job, grades, letters of recommendation, etc.
- physical assault

Reflecting on this list of behaviors, Franklin, et al. (1981) articulated an important distinction often ignored in discussions of harassment. They noted: "For many the most difficult kind of behavior included as a form of sexual harassment (is) verbal harassment or abuse, by which students often mean pejorative (sexist or stereotyped) assumptions made about women as a group in classrooms or other learning environments by persons in positions of authority. Such behavior seems qualitatively different from (other forms of harassment). It is this kind of behavior that we are designating *gender harassment*. We believe that such a distinction is helpful

because it clarifies the dual nature of the problem and so can simplify the development of a code and grievance procedure" (p. 4).

Franklin's distinction is an important one. Many institutions limit their definitions to the clearly *sexual*, which obscures the fact that most harassment has little to do with erotic concerns and is not designed to elicit sexual cooperation but to insult, deride and degrade women. Similar to racial harassment in its purpose and practice, gender harassment has been part of academic life for women since they first won reluctant admittance to the university. Anderson and Zinsser (1988) recount the experiences of the first women medical students at the University of Edinbugh in 1870. Seeking to enter the required course in anatomy "(they) found their way blocked by male students, who barricaded the doors to the hall, threw mud at the women, and shouted obscenities. When the women made their way into the hall, they found their male classmates had placed a sheep in the room, explaining that they understood that now 'inferior animals' were no longer to be excluded from the classroom" (p. 189). Over a century later, in 1980, a woman geographer recalls her graduate school experiences: "Sexual harassment was a way of life. Field trips — a tradition for geographers — were abandoned because women were considered contaminants. One memorable instructor (whose course was required of all graduate students) regularly informed each new generation of graduate students that women are not good for much of anything but sexual exercises. He enjoyed going into graphic description of the trials and tribulations of a journey taken with a group of students during which one female experienced the onset of menstruation. 'Blood all over the damn place,' our professor told the class, 'had to hike miles out of the canyon to find wadding to stuff in her crotch' " (Till, 1980, p. 9). Although the majority of gender harassment is somewhat less dramatic, these examples make clear the nature of the hostility that women often experience even now in their pursuit of higher education. Thus, it is important that institutional definitions be written in a way that does not ignore this very widespread form of harassment.

Two very influential professional statements on sexual harassment are those of the National Education Association (NEA) and the American Association of University Professors (AAUP). The National Education Association has issued a strong condemnation of sexual harassment in higher education (NEA, 1988). In addition, NEA encourages its affiliates and institutions of higher education to include in their harassment definitions a statement to the effect that sexual relationships

between a faculty member and a student for whom he has any teaching or supervisory responsibility are unprofessional. The AAUP also cautions faculty members against entering into romantic or sexual relationships with their students. The AAUP recently revised its guidelines on this issue, and offered this model definition, "Sexual advances, requests for sexual favors, and other conduct of a sexual nature constitute sexual harassment when:

1. Any such proposals are made under circumstances implying that one's response might affect such academic or personnel decisions as are subject to the influence of the person making such proposals; or
2. Such conduct is repeated or is so offensive that it substantially contributes to an unprofessional academic or work environment or interferes with required tasks, career opportunities, or learning; or
3. Such conduct is abusive of others and creates or implies a discriminatory hostility toward their personal or professional interests because of their sex" (AAUP, 1990, p. 42).

When examining definitions and policies developed by educational institutions around the country, one is struck by their variability. Although the legal definitions of harassment, as stated by EEOC and further articulated by case law, prohibit each of the three forms of harassment — *quid pro quo*, as well as both forms of hostile environment, i.e., *gender harassment* and *unwanted sexual approaches* — institutional definitions vary in scope from campus to campus. Although the model definition parallels the EEOC Guidelines, some colleges restrict their definitions to *quid pro quo* harassment, and are less likely to prohibit hostile environment forms. A small but growing number follow the lead of NEA and AAUP and extend prohibitions against harassment to include "consensual" romantic relations between faculty and students, and a similarly small number — usually private colleges, especially those with religious affiliations — have no specific definition or policy at all. The following section examines some of the factors that inhibit consensus in this area.

FACTORS AFFECTING DEFINITIONS

Research in the behavioral sciences documents extensive variability in individual perceptions and definitions of harassment. Fitzgerald and Ormerod (1991) found that, although faculty and students agreed in their evaluation of harassing behaviors, considerable differences in such evaluations existed between men and women. Both sexes agreed that *quid pro quo* behaviors constituted harassment. However, the men were

significantly less likely to evaluate hostile environment behaviors (e.g., sexist or degrading comments, sexual jokes, "come on's") as harassing. Other studies confirm that women are consistently more likely than men to view such behavior as harassment (Kenig & Ryan, 1986), as offensive (Padgitt & Padgitt, 1986), or both.

A second factor that has been shown to affect perceptions of harassment is initiator status. In studies of the workplace, individuals are much more likely to define an incident as harassing if the harasser has formal, supervisory authority and is thus presumably able to back up his demands with some form of action. Students, of course, always have less power than their professors. Still, echoes of this attributional process can be found in arguments defending sexual relationships between faculty members and students they do not directly supervise, or with graduate students who are older and thus presumably more able to "know what they are doing" (See Fitzgerald, Gold, Ormerod & Weitzman, 1988, for data on this point).

Although *quid pro quo* behaviors are almost universally accepted as sexual harassment, even these can be moderated by "seductive" behavior on the part of the female student (Reilly, Carpenter, Dull & Bartlett, 1982). Similarly, individuals are much less likely to consider a behavior harassing if those involved had been dating or formerly had a romantic relationship. Although experience and common sense both suggest that it is in just such situations (e.g., the aftermath of a romantic breakup) that harassment can be most destructive, the cultural norm that female sexual consent — once given — cannot be withdrawn operates to cloud both individual and institutional judgment in this area.

In short, the variation in institutional definitions of sexual harassment parallels the vagaries of individual perceptions — perceptions that are powerfully influenced by cultural stereotypes about appropriate behavior between the sexes, the nature of romantic relationships, women, and sexuality. Like individuals, most institutions define *quid pro quo* behaviors as sexually harassing, but are often careful to specify that the behavior must be *unwanted*, suggesting that some sexual threats and coercion *are* wanted or desired by their recipients. Similarly, although women as a group agree that gender harassment is offensive and degrading, most institutional definitions state that such behavior must "substantially" interfere with performance or the environment. This suggests that there may be an "acceptable" level of interference (see also the EEOC Interpretive Guidelines). Finally, the general omission of consensual sexual relationships from university definitions and policies

reflects academic discomfort and reluctance to interfere in this supposedly private arena. The result is a patchwork of differing definitions and policies reflective mostly of the idiosyncratic history and consciousness of each institution.

Summary

In recent years, definitions of sexual harassment have been articulated under the law and in the policy and procedures of most American colleges and universities. Of the two major forms of sexual harassment, sexual coercion (*quid pro quo*) is widely prohibited by academic institutions. The behaviors that constitute hostile environment harassment are somewhat less widely proscribed. Complicating these definitions — and their acceptance by the academic community — are gender differences in perceptions and definitions, a narrow construction of the professor's zone of influence and power, and historical and cultural mythology concerning women's responsibility for male sexual behavior.

As Crocker (1983) has noted, "Definitions...are important because they can educate the community and promote discussion and conscientious evaluation of behavior and experience. Students learn that certain experiences are officially recognized as wrong and punishable; professors are put on notice about behaviors that constitute sexual harassment; and administrators shape their understanding of the problem in a way that directs their actions on students' inquiries and complaints" (p. 697). She notes that a good definition contains four elements: the labeling of sexual harassment as sex discrimination; inclusion in the definition of the full range of harassing behaviors; acknowledgement that harassment pollutes the nature of the academic exchange; and an understanding that sexual harassment reflects the imposition of unwanted behavior by a person with the power to do so. "By bearing in mind these four areas, we can devise and incorporate into the fabric of academic life definitions that better serve the entire community" (Crocker, 1983, p. 707).

Chapter 3. The Prevalence of Sexual Harassment

"On occasion, in certain forms, it appeared as romance: the naive student swept into bed by her brilliant professor. . .Charlotte Bronte wrote about it more than a hundred years ago; in the popular confessions magazines, authors write about it still. In functional form, it remains the stuff that fantasies are made of, fantasies that reflect and reinforce the tendency of our society to limit the definition of women to the sexual and domestic spheres and to soften. . .the linking of sexual dominance with the powerful and of sexual submission with the powerless." — Franklin, et al., 1981

How widespread is sexual harassment in the university? A considerable amount of research has attempted to examine this issue, addressing such questions as: How extensive is the problem? What types of harassment are experienced most frequently? Who is most likely to be harassed, and so forth. Despite the numerous studies conducted over the last decade, there are still no good answers to these questions. The most commonly cited figure is 30 percent (Dziech & Weiner, 1990; Rubin & Borgers, 1990). But, reported frequencies vary depending upon how the questions are framed, the nature of the student sample — graduate or undergraduate — and whether the researcher actually uses the term *sexual harassment* to label the behaviors being studied.

In the first published survey of the sexual harassment of students, Benson and Thomson (1982) studied the experiences of 269 randomly selected seniors at the University of California, Berkeley. They reported that nearly one in three had experienced some form of harassment from professors over the course of their college careers. In a finding that was to be replicated many times, these investigators reported that sexual bribery and coercion (the *quid pro quo* form of harassment) were relatively infrequent. Rather, unwanted seductive behavior was much more common.

In the wake of this initial study followed a series of conceptually similar, though methodologically diverse, investigations. Wilson and Kraus (1983) reported that 33 percent of the female students in their survey of East Carolina University reported being sexually harassed by male teachers. Once again, the *quid pro quo* behaviors were experienced less frequently

than the other forms. Maihoff and Forest (1983) found that 25 percent of the female students in their Michigan State survey reported at least one incident of sexual harassment. Other studies reported similar (Cammaert, 1985), as well as lower (Metha & Nigg, 1982; Allen & Okawa, 1987) and higher (B. Schneider, 1987) frequencies.

Thus, although many institutions have undertaken self-studies, as well as attempted to determine how various constituencies (e.g., students, professors) define harassment, the differing definitions and methodologies have made it difficult to compare results across studies and achieve some clarity concerning base rate frequencies. In the first edition of their book, Dziech and Weiner (1984) called for the development of a standardized survey instrument that individual campuses could use to measure frequency so that a national profile could be drawn. Although such national data are still unavailable, a standardized instrument was developed recently and made available for general use (Fitzgerald, Shullman, et al., 1988), along with the results of a large-scale study involving two major universities and over 2000 students.

The Sexual Experiences Questionnaire (SEQ) is a 28-item inventory based on the five types of harassment identified by Till (1980) from his qualitative survey of colleges and universities around the country (see Appendix A). The SEQ contains multiple questions addressing Till's five general areas (see Appendix B). All questions are written in behavioral terms, and the words *sexual harassment* do not appear until the end of the questionnaire. It thus avoids the necessity for the respondent to make a subjective judgment as to whether or not she has been harassed before she can respond (an important consideration given the lack of agreement concerning exactly what the term sexual harassment encompasses). The instrument was piloted on a sample of over 400 students, and subjected to various analyses to determine its reliability and validity; a full report of this research is available in Fitzgerald, et al. (1988). It was then used in a large-scale study of two major universities, one in the midwest and the other on the west coast. Data were collected on both male and female participants as well as on undergraduate and graduate students. In all, over 2000 students participated in the study, making it the largest and most representative investigation of academic harassment conducted to date.

The results of this investigation indicate that harassment is much more widespread than had been previously thought. Approximately 50 percent of the women at one university, and nearly 76 percent of the women at the other, answered at least one of the questions in the affirmative direction, indicating that

they had experienced some form of harassing behavior during their college careers. As might be expected, the most frequently reported situations were those involving gender harassment or seductive behavior. Of the 10 most frequently endorsed items, all were of this variety. However, on average, approximately nine percent (or nearly one in 10) of the women had been directly propositioned by a professor or instructor, and five percent of the total sample had been subtly bribed for sexual cooperation. With respect to physical advances, nearly nine percent had experienced unwanted attempts to touch or fondle them, and a large percentage of these experiences were described as forceful in nature. At one university, nearly 30 percent of the graduate student respondents had received unwanted sexual attention from professors, and almost 15 percent had been directly propositioned. Despite these dramatic numbers, less than eight percent of the total female sample indicated — in answer to a separate question — that they had been sexually harassed, a result testifying to the importance of using neutral behavioral terminology when attempting to collect data on this problem. There were no clear patterns of institutional differences, nor of differences due to graduate or undergraduate status. This suggests that although there are clear and reliable differences in the base rates of different types of harassment — gender harassment is by far the most common, unwanted seductive behavior, touching or fondling being second, and *quid pro quo* the least frequent — institutions will need to conduct self-studies to determine where their most serious problems lie (for example, graduate or undergraduate students, disciplinary or departmental differences, and so forth).

Our data, and that of other researchers, make very clear that harassment has a "real world" impact on women's educational careers. On a separate section of the questionnaire, five percent of our female respondents indicated that they had dropped a course to avoid such situations. And, nearly 20 percent noted that they had avoided taking a course for this reason. Despite this interference with their academic endeavors, very few of the women (three percent) attempted to report the harassing situation. Many of the students who had been harassed indicated that they felt that they would not be believed, or that they had not wanted to cause trouble and/or be labeled as troublemakers. A few noted that they had dealt with the situation themselves, or had not felt it was serious enough to report. Fitzgerald, Gold and Brock (1991) discuss this tendency for students to avoid engaging the institution on this issue, or even to simply respond assertively. Interestingly, our data demonstrated that women undergraduates are much more

likely to recommend and endorse assertive responses *for other women* than they are to actually make such responses themselves. Ormerod (1991) offers further experimental data linking this reluctance to a fear of negative consequences from the institution. The need for institutions to design their grievance procedures in such a way that victims are encouraged to come forward has been underscored by recent legal decisions (e.g., *Meritor Savings Bank, FSB v. Vinson*, 1986).

Summary

Although national data are still unavailable, the best information currently suggests that the frequently cited 30 percent incidence rate may be a serious underestimate of the number of women who are harassed during their college or university careers. In particular, the widespread nature of gender harassment and intrusive sexual attention that is not explicitly coercive in nature is typically underestimated and trivialized despite its very real and damaging effects on women's lives (Koss, 1990). Although exceptions may exist, there is no reason to believe *a priori* that any particular institution, type of institution, or academic discipline is exempt from the problem. Informal observation, some theory, and folklore all suggest that women may be most at risk in the traditionally male disciplines where their presence is still somewhat of a rarity. Reliable data are sparse on this point but the hypothesis is logical, and what information does currently exist supports it. Institutions are strongly encouraged to undertake their own self-studies to determine the nature and extent of the problem, as well as to examine student awareness and the perceived effectiveness of the sexual harassment policies and procedures on their campuses. It is only then that any institution can begin to develop a realistic assessment of its unique problems and weaknesses in this area.

EXPERIENCES OF FEMALE FACULTY

Long before sexual harassment was identified as a problem for students in higher education, it had been discussed by social scientists (Gutek, 1985) and legal scholars (MacKinnon, 1979) as a serious problem for women in the workplace. In what is clearly the largest and probably the most well-known study conducted so far, the United States Merit Systems Protection Board (Merit Systems, 1981) investigated harassment in the federal workplace and indicated that 42 percent of all female employees reported being sexually harassed. Merit Systems noted that many incidents occurred repeatedly, were of long duration, and had a sizable practical impact, costing the government an estimated minimum of $189 million over the two-year period covered by the study. When

explicit behaviors were examined, 33 percent of the women reported receiving unwanted sexual remarks, 28 percent reported suggestive looks, and 26 percent reported being deliberately touched. These behaviors were classified as less severe forms of harassment. When more severe incidents were examined, 15 percent of the women reported experiencing pressure for dates, nine percent reported being directly pressured for sexual favors, and nine percent had received unwanted letters and telephone calls. One percent of the sample had experienced actual or attempted rape or assault. Merit Systems repeated their study in 1987 and reported essentially identical results.

The most extensive study of the civilian workplace was conducted by Gutek (1985). Based on telephone interviews generated through random digit dialing procedures, Gutek reported that 53 percent of her women subjects had experienced at least one incident that they considered harassing during their working lives, including insulting comments (19.8 percent); insulting looks and gestures (15.4 percent); sexual touching (24.2 percent); socializing expected as part of the job (10.9 percent); and expected sexual activity (7.6 percent). The actual incidence rates for these behaviors were considerably higher, as this discussion utilizes figures only for those behaviors that the women considered to be harassing. Although the differences between the Gutek and Merit Systems methodology make comparisons difficult, their overall estimates are fairly comparable, i.e., approximately half the female workforce has been sexually harassed.

Despite these figures, it is only recently that any attention has been given to the academic workplace and the ways that harassment affects the women faculty who work there. In one of the few studies of this kind, our research group (Fitzgerald, et al., 1988) examined the experiences of a large sample of such women who were employed at a medium-sized public university in the midwest. Using an adaptation of the SEQ described above, we found that large numbers of these women reported patterns of experiences that met the legal definition of sexual harassment.

Over half the women faculty and 75 percent of the female administrators in our sample had experienced some form of gender harassment in the academic workplace. Specific behaviors they reported included the telling of suggestive stories and offensive jokes, crudely sexual remarks, seductive comments, non-verbal harassment such as staring, leering or ogling, the use or distribution of sexist material or pornography, a pattern of sexist remarks about women, and — most frequently — simply being treated less well because they were women.

In addition, over 20 percent of the women professors — one in five — and nearly one in three of the administrators reported being the object of unwanted sexual advances, including persistent requests for dates, repeated attempts to establish a sexual relationship, unwanted discussion of personal or sexual matters, and unwanted sexual attention. Over 25 percent of the administrators reported receiving outright sexual propositions. Approximately half of these women reported being physically touched or handled at work in ways that made them uncomfortable, and a substantial minority of these incidents were persistent or forceful in nature. Finally, although only a small number of women professors reported *quid pro quo* harassment, over 13 percent of the women administrators reported being subtly or directly bribed to be sexually cooperative. Nearly 10 percent noted that they had received subtle threats. And eight percent had experienced actual negative consequences for refusing to cooperate sexually.

Although these data may be the most detailed currently available, subsequent research has demonstrated that they are in no way unique. In a study of academic and non-academic employees at Central Michigan University, Goodwin, Roscoe, Rose, and Repp (1989) reported that 39 percent of the women reported experiencing some form of sexually harassing behavior that made them uncomfortable. The most frequent experiences were sexist behaviors, sexual comments and body language, although 18 percent of the women also reported physical advances. Bandy (1989) studied faculty, staff and academic professional women at Southern Illinois University and reported that approximately one-third of each group had experienced sexual harassment during the two-year period covered by the study. Although rates did not differ substantially among the three groups, women working in non-traditional areas were considerably more likely to have been harassed.

WHO HARASSES WOMEN FACULTY?

Studies of harassment generally note that it has to do with the abuse of power, and either assume or assert that harassers are individuals with more power than their victims, although studies of the general workplace indicate that much harassment can be traced to peers or colleagues. In an important paper, Katherine Benson (1984) argued that it is also possible for the harasser to have less formal (achieved) power than his victim, a situation she refers to as contrapower harassment. She notes that although professors have more formal power than students, men in American society have considerably more power than women simply by virtue of being men. This is

a situation that can equalize if not reverse the power differential between female professors and male students. Such an argument suggests that female academics may be at risk of harassment not only from institutional superiors and colleagues, but also from their male students. A small but important body of research demonstrates that this is indeed the case (see, for example, Bedard & Hartung, 1991).

In 1989, Elizabeth Grauerholz studied the women faculty at Purdue University and reported that nearly half of her sample reported having been sexually harassed by one or more of their male students. These incidents ranged from the merely annoying (sexist or sexual comments) to the outrageous (e.g., sexual propositions, bribery). Seventeen percent of these women professors had received obscene phone calls from male students, and one respondent had been raped. In addition, open-ended questions elicited a wide range of other, sometimes bizarre and frightening, experiences "such as defacing the professor's office door or spray-painting obscenities on the instructor's automobile . . . students shouting obscenities and insults at the professor while she was walking, or in one case, while in her office working. One woman described being chased physically in her office and then to her car by a student" (pp. 739-794). McKinney (1990) provides additional evidence of faculty members harassed by students.

CAN MEN BE SEXUALLY HARASSED?

Although sexual harassment is generally perceived as a problem for female students, some have suggested that it may also be an issue for men as well. The available research base suggests that this is unlikely to be so. Both Kottke (1981) and Metha and Nigg (1983) report that only five percent of male respondents at their universities reported being sexually harassed. Reilly, Lott and Gallogly (1986) found that the percentages of men reporting harassment at the University of Rhode Island to be quite low. Similarly, in the Fitzgerald, et al. (1988) study, harassing behavior directed at men was virtually non-existent. The one exception to this was in the area of gender harassment, and it was unclear from the data whether the men experienced situations such as suggestive stories or jokes as inappropriate or harassing.

Although it is clearly possible for male students to be harassed (see, for example, *Korf v. Ball State University*, where a male professor was discharged for sexually exploiting several male students), it is also clear that this is generally unlikely to happen and that harassment is overwhelmingly a female problem. University affirmative action officers note an increase in male complaints in the past year or so (Cowan, 1991).

however, such complaints still represent only a tiny fraction of those received by university offices. A complicating factor here is the stigma often associated with homosexuality which may serve to inhibit men from coming forward. (As in the more general case of female victims, harassers of male students are almost universally men as well.) Although it is critical for institutions to insure that all students are protected from sexual exploitation, it is clear by now that harassment is not an equal opportunity phenomenon. This fact has important implications for institutional programming in this area.

It is instructive here to keep in mind Mills' (1959) distinction between private troubles and public issues. Hoffman (1986) reminds us of this when she writes: "Private troubles occur when isolated events cause personal difficulties for individuals — they are the vicissitudes of individual biographies, related peripherally at best to the location of the individual in the social structure. Public issues, on the other hand, are structurally induced problems affecting large numbers of individuals in particular social locations. Since they are the consequences on individual lives of the institutional arrangements within which individuals live, they are not amenable to individual solutions. . . . The sexual harassment of men by women is a private trouble, that of women by men a public issue" (p. 110).

Summary

For women, the academy is rarely an ivory tower; rather, it is a frequently hostile and sometimes violent environment. Reskin (1990) has noted that Western universities were founded by European men to further their intellectual endeavors and those of their (male) students; women, to this day, are outsiders to some degree. It should go without saying that this state of affairs is not generally intentional, but rather the historical outcome of a system that has expanded to include the presence of women without many of the normative, psychological or structural changes that would allow their full integration. The exploitation of and hostility towards women that are documented here and elsewhere are the most dramatic forms of a marginality that is still, too often, rationalized or ignored. As with other important social issues (e.g., civil rights, affirmative action), legal challenges by disadvantaged groups have been the critical stimulus to change. It is to this legal history and context of sexual harassment in higher education that we now turn.

Chapter 4.
The Legal Context of Sexual Harassment

"The attraction of males to females and females to males is a natural sex phenomenon and it is probable that this attraction plays at least a subtle part in most personnel decisions."—Miller v. Bank of America, 1979

"Surely a requirement that a man or woman run a gauntlet of sexual abuse in return for the privilege of working and making a living can be as demeaning and insulting as the harshest of racial epithets."—Henson v. City of Dundee, 1982

"Sometimes, even the law does something for the first time."—MacKinnon, 1988

There is no longer any question that sexual harassment is a form of sex discrimination prohibited by both Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972. Initially reluctant to recognize harassment as a cognizable offense, courts have become increasingly hospitable to such cases. Although the law is less well-developed with respect to harassment of students, that which does exist suggests that courts take an even more serious view of this offense within academia. The following section summarizes the current legal situation with particular emphasis on the university community. The discussion is divided into three sections: the employee as a victim of sexual harassment, the student as a victim, and the employee charged with sexual harassment and the consequences thereof.

UNIVERSITY EMPLOYEES

The harassment of employees, including those who work in a university setting—faculty, staff, student workers—is illegal under the terms of Title VII of the Civil Rights Act, and depending upon the state, may be illegal under relevant state statutes as well. Employees may also be covered under Title IX. Although courts were originally reluctant to interpret Title VII as providing protection from unwanted or abusive sexual approaches [see, for example, *Corne v. Bausch and Lomb, Inc.* (1975) and *Miller v. Bank of America* (1979) where the courts appeared to fear the possibility of an avalanche of frivolous suits], this reluctance has increasingly given way to decisions supporting the theory that such behavior is actionable under this statute [see *Barnes v. Costle*, 1977; *Tomkins v. Public*

Service Electric & Gas Co., 1977, and other early cases; more generally, see Cole (1990) for a review of recent legal developments in sexual harassment and R. Schneider (1987) as well as Connolly and Marshall (1989) for detailed analyses of sexual harassment decisions as they pertain to higher education].

Quid pro quo harassment

Most well-developed at this point is the series of decisions indicating that *quid pro quo* harassment is a clear violation of Title VII. Indeed, so severely do the courts view this form of abuse that even a single incident is generally sufficient to sustain a case against an employer (EEOC, 1990; R. Schneider, 1987). Additionally, in cases where the harasser has supervisory responsibility (a common situation in *quid pro quo* cases), the organization is generally held directly liable even though it had no knowledge of his behavior. Such liability historically was limited to the actual economic damage suffered by the victim, such as back pay. Punitive damages were not an available remedy under Title VII. The Civil Rights Act of 1991 amends Title VII to permit an award of limited punitive damages against private employers, but the prohibition of such damages against public employers remains. Compensatory damages are now available against public employers.

Hostile Environment Harassment

Far more frequent than *quid pro quo* situations are those in which victims lose no tangible benefits of employment; rather, in the words of the EEOC, the harassing behavior "has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment" (EEOC, 1980). Most complaints of sexual harassment are of this sort and cover situations where no job-related decision is conditioned on sexual cooperation. Rather, the victim is placed in an untenable situation either through persistent and unwanted sexual attention, or the creation of an offensive and degrading environment by a pattern of sexual remarks, conversation, suggestions, insults and the like.

Courts have been slower to support the offensive environment theory of sexual harassment, first legally articulated in 1981 (see *Bundy v. Jackson*, 1981). However, a growing body of case law has supported the viability of this theory, culminating in the first harassment case to reach the Supreme Court, *Meritor Savings Bank, FSB v. Vinson* (1986). Michelle Vinson was hired as a bank teller by Sidney Taylor, branch manager for a bank that eventually became Meritor Federal Savings. Shortly

after the completion of Vinson's probationary period, Taylor allegedly invited her to dinner and during the course of the meal suggested that they go to a motel to have sexual relations. Vinson testified that she at first refused but, out of fear of losing her job, eventually agreed. Taylor thereafter made repeated sexual demands on her, usually at the branch office both during and after business hours. As a result of his demands, Vinson estimated that she had sexual intercourse with Taylor 40 or 50 times over the course of her employment at the bank. In addition, Taylor fondled her in front of other employees, followed her into the women's restroom when she went there alone, exposed himself to her, and even forcibly raped her on several occasions. Because she was afraid of him and of losing her job, Vinson never reported Taylor to his supervisors. The bank's complaint procedures required Vinson to report her complaint to her supervisor, in this case, the harasser. Four years after she was hired, she took sick leave for an indefinite period, and two months later the bank discharged her for abusing that leave. Vinson filed a Title VII discrimination suit against Taylor and the bank, alleging that he had sexually harassed her during the entire course of her employment.

In the original decision, the district court declined to entertain Vinson's claim, noting that any sexual relationship with Taylor was "voluntary" in nature, that Vinson had suffered no tangible harm due to this relationship which was thus not a violation of Title VII. The appellate court disagreed, ruling that the district court had not considered the merit of Vinson's claim under a hostile environment theory. The case eventually reached the Supreme Court, which ruled that a claim of hostile environment sexual harassment is indeed a form of sex discrimination that is actionable under Title VII, and that the language of Title VII is not limited to threat of economic or tangible job loss, although the plaintiff still must demonstrate that the harassment affected the terms or conditions of employment.

The importance and viability of hostile environment claims were recently emphasized by a Florida decision (*Robinson v. Jacksonville Shipyards, Inc.*, 1991) in which the District Court determined that posting pictures of nude and partially nude women is a form of sexual harassment. Previous cases had determined that pornographic pictures may contribute to an atmosphere of sexual harassment. *Robinson* is thought to be the first decision affirming that such pictures themselves can constitute harassment. The judge in the case, Howell Melton, reasoned that the resulting sexualized atmosphere was a significant impediment to women in the workplace and

declared "a pre-existing atmosphere that deters women from entering or continuing in a profession or job is no less destructive to and offensive to workplace equality than a sign declaring 'men only'."

Federal Guidelines

In addition to its original guidelines on sexual harassment (EEOC, 1980), the agency has recently published an important document providing guidance for defining sexual harassment and establishing employer liability in light of *Meritor* (EEOC, 1990). EEOC notes that *Meritor* affirmed both its original EEOC definition of harassment and the basic principles of the 1980 Guidelines on Sexual Harassment. The agency then offers an extensive discussion of how to determine whether a work environment is hostile and ways to evaluate evidence of sexual harassment. The discussion proposes three important elements for determining whether sexual harassment has occurred: the ***unwelcomeness*** of the behavior, the ***pattern*** of behavior, and the ***evaluation*** of the behavior.

With respect to unwelcomeness, the Supreme Court noted in *Meritor* that the *sine qua non* of a sexual harassment claim is that the alleged advances are "unwelcome." Thus, Title VII does not prohibit all sexual behavior among employees in the workplace, but only that which is unwelcome and offensive to the recipient. Arguing that the distinctions between invited, welcome, tolerated, and rejected behavior are not always easy to determine from the available evidence, EEOC underscores that such distinctions are nonetheless crucial "as sexual conduct becomes unlawful only when it is unwelcome" (EEOC, 1990). It suggests that, in addition to confronting the harasser, telling him to stop, etc., the victim's claim will be considerably strengthened if she contemporaneously makes a protest or files a complaint. It should be pointed out, however, that *Meritor* established that a victim does not automatically lose her right to Title VII relief simply because she chooses not to file a complaint. In Vinson's case, the complaint procedure established by the company did not address issues of sexual harassment and required her to complain first to her supervisor, the person responsible for the harassment. Had the complaint procedure contained alternatives, the employer might have made a stronger case for non-liability because of Vinson's failure to invoke the available procedure.

EEOC (1990) emphasizes that hostile environment claims must generally establish a pattern of offensive behavior, unlike *quid pro quo* claims which can be triggered by a single event. For example, *Neville v. Taft Broadcasting Co.*, 1987, demonstrated that one sexual advance is generally not sufficient to

create a hostile environment. EEOC cautions, however, that "a single, unusually severe incident of harassment may be sufficient to constitute a (hostile environment) Title VII violation; the more severe the harassment, the less need to show a repetitive series of incidents. This is particularly true when the harassment is physical" (p. 17).

Finally, the agency advocates the use of a "reasonable person" standard for determining whether a work environment is hostile. In this regard, it should be pointed out that the U. S. Court of Appeals for the Ninth Circuit recently ruled that the appropriate standard is conduct that a "reasonable woman" would consider sufficiently severe or pervasive to "alter the conditions of employment and create an abusive working environment" (*Ellison v. Brady*, 1991). The court declared that a sex-blind "reasonable person" test would tend to be male-biased and ignore the perspective of women, thus arguing that a "reasonable woman" standard was the correct benchmark. This ruling is in accord with the great preponderance of evidence showing that: (1) victims of harassment are, overwhelmingly, female; and (2) men consistently demonstrate a much narrower conception of sexual harassment than women and reliably consider fewer behaviors and situations to be harassing (Fitzgerald & Ormerod, 1991; and others).

Liability

Unlike *quid pro quo* harassment, hostile environment cases are generally thought to trigger employer liability only when the organization knew or should have known of the sexual misconduct. The EEOC argued in its *Vinson* brief that complaints to management or the EEOC, pervasive harassment, or lack of a harassment policy or grievance procedure all contribute to establishing direct or constructive knowledge on the part of an employer. The Supreme Court declined to make a definitive ruling on the issue of employer liability in hostile environment cases, although it quoted the EEOC brief at length.

There is currently disagreement not only over the nature of employer liability, but also over the effectiveness and, therefore, desirability of various forms of liability for inhibiting harassment. Although the law is somewhat unsettled in this area, it seems clear that the most potent protection for an employer is to have a strong anti-harassment policy and clear grievance procedures for implementing it. Additionally, the policy should be one that is "calculated to encourage victims of harassment to come forward" (*Meritor*, 1986, 2409).

Summary

The sexual harassment of any university employee, be

that person faculty, staff or student worker, is a violation of Title VII of the Civil Rights Act and places the university at risk for liability for the harasser's actions. In addition, such behavior may violate relevant state statutes. In cases of *quid pro quo* harassment, even one incident may be sufficient to support a charge against the university, which then may be held responsible even if it had no knowledge of the sexual misconduct.

Charges of hostile environment harassment generally, but not always, require a pattern of unwelcome behavior that a "reasonable woman" would find offensive. Although the extent of employer liability for offensive environment charges is currently unclear, universities can best protect themselves by instituting: (1) strong policies against sexual harassment that are designed to encourage victims to come forward; and (2) clear grievance procedures for implementing such policies.

STUDENTS

Despite the considerable body of formal literature documenting the extent of sexual harassment of college and university students, as well as the wealth of informal, anecdotal and media reports, it is only recently that institutions of higher learning have found themselves the targets of litigation concerning this matter. Title IX of the Education Amendments of 1972 is the relevant federal statute prohibiting sexual discrimination against students in educational institutions that receive federal funding. As noted above, students who are also employed by the university as teaching and research assistants may also claim a cause of action under Title VII, and relevant state statutes may apply as well.

***Franklin v. Gwinnet County Public School District* (1992)**

This case was decided by the Supreme Court in February 1992. At issue was whether a student could sue a school district under Title IX for compensatory damages. In 1988 Franklin alleged that, as a student, she had been subject to a pattern of sexual harassment by one of her teachers. Following what she believed to be an unsatisfactory investigation by the school district and pressure on her to drop her complaint, Franklin filed a Title IX complaint with the Office of Civil Rights of the United States Department of Education. O.C.R. found that the school district had violated Title IX by subjecting Franklin to physical and verbal sexual harassment and by interfering with her right to complain about it. Franklin filed a federal suit in 1988 requesting compensatory damages, basing her case on the theory that the courts can expand remedies in cases of intentional discrimination and that the express desire of Congress to eliminate discrimination on the

basis of sex would be thwarted without an adequate remedy for the victims. The court found that compensatory damages are available under Title IX through the filing of private lawsuits. The monetary ramifications of this decision for educational institutions are enormous. Title IX also covers employees and may afford remedies beyond Title VII because there are no caps on punitive damages.

In the federal courts, three additional sexual harassment suits under Title IX further clarify the issue: *Alexander v. Yale* (1980), *Moire v. Temple University School of Medicine* (1986), *Lipsett v. University of Puerto Rico* (1988). Although the student complainants did not prevail in any of these three cases, the decisions established that sexual harassment charges do lie within the purview of Title IX. The cases also outlined the grounds for further litigation in this area. Because Title IX imposes a requirement that institutions establish a grievance procedure for claims of sex discrimination—as opposed to Title VII, which merely recommends it—and because colleges and universities are making efforts to raise awareness of sexual harassment, litigation may increase as students become aware of their rights. Students, therefore, may be more likely to challenge academic sexual harassment in the courts as the scope and extent of Title IX relief becomes clearer. (See *Franklin*, above.)

Alexander v. Yale (1980)

Alexander v. Yale has earned a place in legal history as the first federal case alleging sexual harassment brought under the auspices of Title IX. The case is particularly interesting because its plaintiffs alleged a variety of claims—both *quid pro quo* and hostile environment—as well as the lack of appropriate grievance procedures, as required by Title IX. The students asked for injunctive relief in the form of the development of an appropriate grievance procedure at the University. In the Connecticut District Court where the case was first heard in 1977, the court held that the plaintiff who alleged that she received a low grade because she refused to cooperate sexually with her professor did indeed have a "justiciable" claim. This established, for the first time, that *quid pro quo* harassment of students violates Title IX. The court explicitly rejected the claims of her co-plaintiffs—who alleged that they were harmed by the sexually intimidating and hostile atmosphere at Yale—holding that environment and atmosphere were "imponderables" not contemplated by Title IX. The students' further allegation, that Yale's failure to establish appropriate grievance procedures for claims of sexual harassment contributed to the offensive environment and was tantamount to official policy condoning harassment, was also rejected.

On appeal, the Second Circuit affirmed the decision of the lower court, further confirming the right to sue for *quid pro quo* harassment under Title IX. Other issues were left undecided. For example, the court did not address the hostile environment issue which had become moot due to the graduation of the complainants. In addition, Yale had in the interim established a grievance procedure. Thus, although the decision leaves significant questions unanswered, it did firmly establish that a student claim of sexual harassment by a professor lies within the purview of Title IX, at least when the student can claim that she has suffered some tangible educational harm (see R. Schneider, 1987, for a thorough discussion).

Moire v. Temple University School of Medicine (1986) and Lipsett v. University of Puerto Rico (1986)

In *Moire*, the second federal suit brought under Title IX, a woman medical student brought a hostile environment claim alleging that she had failed her third-year psychiatric clerkship due to sexual harassment by her supervisor. Moire raised no *quid pro quo* allegations, asserting rather that she had been subjected to harassment on the basis of her sex, and that the university had conspired to protect the supervisor. Although the district court did not find the evidence in Moire's case to be convincing, it did allow the claim which was based solely on an allegation of environmental harm. A very similar case, and decision, can be found in *Lipsett v. University of Puerto Rico* (1986). In combination with the Supreme Court's decisions in *Franklin* and *Meritor*, these strongly suggest that hostile environment cases may significantly increase in the near future. [Elgart and Schanfield (1991) argue that the future of hostile environment theory under Title VII is still unclear; interested readers should consult their article for a complete discussion.]

Implications for Institutions of Higher Learning

The recent Supreme Court decision in *Franklin v. Gwinnett County Public Schools* (February 26, 1992) is the most significant ruling under Title IX. It clearly establishes that money damages are available to students and other victims of intentional gender discrimination (in this case sexual harassment). It has broad implications for college and universities including:

- The decision is likely to be construed as expanding significantly the remedies previously understood to be available under two federal anti-discrimination statutes—Title VII of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation ACT of 1973 which prohibits discrimina-

tion by recipients of federal funds on the basis of race and disability. *Franklin*'s recognition of more extensive remedies under Title IX almost certainly means that courts will determine that the same remedies are available under Title VII and Section 504.

- Because money damages are now available, plaintiffs suing under Title IX will be entitled to jury trials.
- The expanded remedy that *Franklin* establishes is limited to cases involving intentional discrimination. The extent to which discriminatory activity of an employee can be imputed to the educational institution will assume ever greater significance in new cases.
- Colleges and universities are well advised to put preventive programs in place and to review internal practices and procedures aimed at minimizing exposure to liability such as that allowed by *Franklin*.

In the most complete analysis of academic sexual harassment available in the legal literature, Schneider (1987) notes the paucity of applicable federal cases and offers an analysis extrapolated from Title VII jurisprudence and applied to the faculty/student case. She offers a definition that tracks the EEOC definition of harassment in the workplace, suggests the use of the "reasonable student" standard for determining whether an environment is hostile, accepts the proposition that hostile environment harassment requires a pattern of behavior whereas *quid pro quo* can be triggered by a single incident, and generally suggests a theory consistent with the guidance recently offered by EEOC (1990) with respect to workplace harassment. She cautions, however, that some distinctions are relevant. For example, the notion of hostile environment may prove even more powerful in academic situations. She writes: "A nondiscriminatory environment is essential to maximum intellectual growth and is therefore an integral part of the educational benefits that a student receives . . . Any diminution or deprivation of such an academic benefit on the basis of sex violates Title IX" (p. 551). She argues further that a higher standard should be imposed upon faculty members' behavior toward students than upon employers' behavior towards workers. "The student-faculty relationship encompasses a trust and dependency that does not inherently exist between parties involved in a sexual harassment claim under Title VII" (p. 551). Noting that Title IX mandates a grievance procedure for allegations of sex discrimination, whereas Title VII does not, she suggests that "the inclusion of such prophylactic measures in Title IX may suggest that Congress perceived a need for broader protection against discriminatory behavior in the academic context" (p. 545).

Schneider is not alone in suggesting that the courts may hold faculty to a higher standard than employers. In their recent article on campus policies and sexual harassment law, Little and Thompson (1989) state: "In the world of work, actionable harassment must be severe and pervasive. [Recent legal decisions] suggest that this standard does not apply to the professional members of an academic community. The courts maintain high standards of conduct for academia. Indeed, these standards are often more strict than the law requires." (Little & Thompson, 1989, p. 21).

Summary

Although the sexual harassment of students by faculty has only recently become a subject of litigation, the federal cases that have been decided seem to indicate that both *quid pro quo* harassment and hostile environment harassment are cognizable claims under Title IX. In addition, there is reason to believe that the courts may take an even stronger position on academic harassment than on its workplace counterpart, holding institutions of higher learning to a stricter standard than that previously applied to employers. The scope of institutional liability suggests the desirability of a proactive stance on this issue, including but not limited to strong anti-harassment policies, clear grievance procedures, and active programs to inform and educate both faculty and students.

GROUNDS FOR DISCIPLINE OF FACULTY

Although colleges and universities have not often pursued discipline against tenured faculty members for sexually harassing students, Cole (1986) stated, "Courts appear willing to defer to the academic judgment of college administrators in their attempts to discipline offending faculty. The courts regard the college's protection of students from such abuse as an important duty with concomitant responsibility and liability such as colleges have not seen since the demise of *in loco parentis*" (p. 17). In this context, it is important to note that tenure has proven to be no immunity in cases where institutions have determined that a faculty member is guilty of serious sexual harassment. Three recent cases demonstrate the courts' willingness to support faculty discipline.

***Cockburn v. Santa Monica Community College* (1984)**

Cockburn, an instructor at Santa Monica Community College, was terminated from his position for sexual harassment. He sued the college, alleging that the punishment was too severe. Cockburn admitted to grabbing and kissing a student employee, but denied allegations by several other

students that he had made lewd comments and fondled them against their will. A psychologist examined Cockburn and testified that he could be rehabilitated. Despite this testimony, the court upheld the termination, stressing that the personnel commission that made the decision had a "grave responsibility . . . to the (college) and their personnel, the professors, instructors, students . . . and the general public" (p. 597).

***Korf v. Ball State University* (1984)**

Korf is instructive on several accounts. The case demonstrated that same-sex harassment is accorded the same treatment as heterosexual cases; in addition, the court declined to consider the issue of consent as a defense in cases of faculty/student sexual harassment, and supported the faculty member's termination even though Ball State did not have any explicit policy prohibiting faculty/student sexual relationships, finding instead that the relationship at issue constituted an unethical exploitation of students. In *Korf*, the university committee charged with hearing the case determined that Korf's advances to male students, consensual or not, involved unethical conduct, as defined in the *Faculty Handbook*, and recommended first probation, then remand, dismissal. Korf offered the defense that a student in question had initially consented to the relationship and that, in any event, the university had violated his constitutional right to due process. Since Ball State had no explicit policy covering these matters, Korf argued that he had inadequate warning concerning the consequences of his conduct.

The court held that the student's consent or lack of consent was not the issue, as the complaint against Korf was "exploiting students for his private advantage." It relied explicitly on the fiduciary nature of the professor-student relationship and noted "University professors occupy an important place in our society and have concomitant ethical obligations" (p. 1227). Despite the absence of an explicit policy, the court noted that common sense and good judgment should have warned Korf that his conduct was inappropriate. The court cited, with approval, the AAUP Statement on Professional Ethics that admonishes the professor to demonstrate respect for the student and "adhere to his proper role as an intellectual guide and counselor."

***Levitt v. University of Texas at El Paso* (1986)**

Levitt is another case that demonstrates, once again, that tenure does not protect faculty members from the professional consequences of their actions. Levitt, a tenured professor of chemistry, was terminated by the University of Texas at El

Paso based on complaints of pervasive sexual harassment of female students. In challenging the decision, Levitt offered a due process argument, claiming that the university's disciplinary procedures were biased against him and had violated his rights of due process. The strategy was not successful. The Fifth Circuit held that even though the institution had failed to follow its own rules exactly, it did not deny Levitt any constitutional guarantees.

Naragon v. Wharton, et al (1984)

Naragon is another case where a decision to discipline a university employee, in this case a female graduate assistant, involved in a relationship with a female student was made and upheld not on the basis of the assistant's sexual orientation but on the belief of the university that the relationship with the student was a breach of professional ethics and undermined Naragon's effectiveness with other students. Naragon sued the university based on a violation of her constitutional rights under the First and Fourteenth Amendments when she was removed from teaching and her assignment changed, although she suffered no loss of pay. The court found that it was the relationship with the student and not Naragon's homosexuality that occasioned the discipline and that there was no need to examine the issue of any violation of her constitutional rights.

Summary

As this review of relevant court cases makes clear, the courts grant considerable deference to academic institutions' right to discipline faculty members for sexual harassment. Although care must obviously be taken when preparing and pursuing a case where serious penalties may ensue, universities need not avoid vigorous disciplinary measures for fear of possible retaliatory legal action. Universities that have based discipline and dismissal of faculty accused of sexual harassment on professional standards internal to the institution rather than on external or legal standards have found support in the courts.

Chapter 5.
Institutional Policies and Procedures

"The best means by which a university can protect itself . . . is to draft, implement, and enforce a sexual harassment policy."—Connolly & Marshall, 1989

There is general agreement that the most important action a university can take is to establish a strong policy against sexual harassment and a clearly articulated grievance procedure for handling complaints. Unions also have a role to play in ensuring a discrimination-free workplace. Appendix D is an excerpt from the NEA brochure "NEA Fights Sexual Harassment." It outlines some of the actions local unions and individuals can take within their institutions to ensure that sexual harassment is not tolerated. Not only does Title IX mandate that institutions of higher learning establish procedures for resolving complaints of discrimination on the basis of sex, but the *Meritor* decision establishes the importance of such procedures in adjudicating Title VII claims as well. This section of the paper will examine what is currently known about institutional policies and review relevant policy recommendations concerning their establishment and maintenance.

EXTENT AND NATURE OF POLICIES

The most extensive analysis of academic sexual harassment policies to date was provided by Robertson, Dyer, and Campbell (1988). With funding provided by the U. S. Department of Education through the Women's Educational Equity Act, these authors surveyed nearly 700 American colleges and universities—approximately 10 percent of all American institutions of higher learning—concerning: (1) their methods for handling sexual harassment complaints; (2) the content of their institutional policies and procedures; and (3) their assessment of the effectiveness of various types of university responses to the problem.

Sixty-six percent of the respondent institutions had formal sexual harassment policies and 46 percent had specific grievance procedures for dealing with complaints. These overall figures obscure some interesting patterns, however. When the sample was divided into public institutions (which tended to be large) and private institutions (which tended to be small) a clearer picture emerges. Nearly 80 percent of public schools had policies and 54 percent had grievance procedures. In comparison, slightly over 50 percent of private schools had policies and

only 38 percent had procedures. In general, private schools were less likely to have addressed the problem vigorously. For example, fewer private schools had conducted sexual harassment self-studies and many tended to underestimate the number of complaints they received, compared to the average number provided by those who kept formal statistics. The Robertson study found that much of the difference between public and private institutions could be attributed to religious institutions which tended to have few equity policies of any kind.

With respect to actual complaint resolution, the most frequent outcome was an informal process in which the complainant was given advice about handling the situation. Official investigations were relatively rare and actual formal sanctions against faculty almost non-existent. The authors note: "It seems that, faculty fears to the contrary, institutions seldom have levied career-damaging sanctions for sexual harassment. Most cases are handled and resolved informally" (Robertson, et al., 1988, p. 799). Nevertheless, many respondents reported that considerable apprehension surrounded the institution of sexual harassment policies. The most commonly expressed fear was of false complaints (78 percent) which was linked to concern about possible damage to faculty careers. Faculty were also concerned that confidentiality would not be appropriately safeguarded, or that their freedom of speech or association would be abridged.

Noting that fear of false accusations is a major source of resistance to the implementation of sexual harassment policies and procedures, the authors calculated the maximum number of complaints that could be classified as false and reported: "A rough extrapolation from the numbers given would make the false complaints less than one percent of the annual complaints. This is a maximum estimate that does not take into account that some complaints listed as false by administrators may have been genuine . . ." (p. 800).

These researchers also examined the actual policies established by the responding institutions. They reported that most of these were based to some degree on the EEOC Guidelines (1980), particularly the portion attempting to prohibit forced sexual relations through the misuse of power or authority (*quid pro quo*). They note, however, that definitions including the notion of "hostile environment" were much less widespread. Many of the institutions that used the Guidelines as a model had modified—that is, weakened or eliminated—this section, apparently because of apprehension concerning the possible implications of allowing the offense to be at least partially defined by the victim's perceptions of the environ-

ment. Given that the Robertson data were collected in 1984, when the EEOC Guidelines and sexual harassment litigation were both relatively new, it is likely that current policies are more likely to incorporate a "hostile environment" element into their definitions of sexual harassment. The recent success of a hostile environment claim at the highest level of judicial review (i.e., *Meritor*) suggests it would be prudent for institutions to do so.

THE ROLE OF THE UNION

It is important to mention the special role played by unions. As Gluck (1989) has noted, few issues are as fraught with contradictions for unionists—particularly feminist unionists—as sexual harassment. For faculty members and other employees who belong to a union, the problem raises additional issues of due process, contractual enforcement, and above all, moral dilemmas that are specific to union members. First and foremost, the association should be involved in the formation of procedures for handling sexual harassment complaints to insure protection and due process for its members, whether accused or accuser. There is also a need to educate members about sexual harassment. In the face of proposed institutional sanctions, the union is often called on to defend an accused perpetrator whose actions, if proven, are clearly abhorrent to the membership. Conversely, because standard contractual language includes a non-discrimination section, and given that sexual harassment is defined as sex discrimination, unions may be held liable for violation of their "duty of fair representation" if they are presented with a case and do nothing to assist the member who has been subjected to harassment.

Such dual responsibilities can create dilemmas, but also often yield creative solutions. Gluck describes just such a situation at California State University-Northridge, whose union-supported Women's Council has developed a procedure in which the Faculty Rights Committee assists the accused perpetrator through the necessary process, while other committee members offer support and assistance to the complainant. This dual process makes clear that, although the union will protect faculty rights to due process, it also opposes sexual harassment and will support complainants. The most important message here is that unions must work with the administration, the Faculty Senate and other such bodies to establish a strong anti-harassment policy and clear, workable procedures for acting on complaints. Public support of the union, when added to that of the administration, the Senate, and other campus organizations, can contribute enormously to

eradicating harassment in both the classroom and the academic workplace.

GRIEVANCE ARBITRATION

Arbitrators under collective bargaining agreements have been addressing sexual harassment issues on a limited, but regular, basis since at least 1977. Monat and Gomez (1986) reviewed 36 arbitration cases on the topic and found that "the issue of sexual harassment virtually always arises in arbitration where a grievance has been filed by the alleged harasser after discipline has been imposed" (p. 26). Most arbitrators have cited or followed the EEOC Guidelines on the conduct necessary for a finding that harassment occurred. Arbitrators have found actionable harassment occurred when offensive remarks and leering went on for a period of time, when "accidental" touching of female students' breasts, arms, and legs happened during instruction, and when obscene drawings were posted where they could be seen by employees.

Arbitrators have also upheld the employer's right to impose discipline in cases of harassment. Discharges were upheld by arbitrators where it was proven that the sex-related conduct had occurred over a long period of time, where the harassment was accompanied by a threat of rape or assault, and where the employer, such as a hospital or nursing home, had a special need for sensitivity. In other cases employees were suspended for a short time, ordered to obtain therapeutic counseling, and/or given final warning and a long–term suspension. Thus, in an increasing number of cases, arbitration may prove a practical alternative to the prospect of extended litigation.

PROCEDURES FOR RESPONDING TO COMPLAINTS

There is considerable guidance available to institutions that wish to establish or revise their procedures for responding to sexual harassment. Information is also available for unions that wish to negotiate contractual language on non-discrimination. Cole (1988) has developed an extensive outline giving a step-by-step procedure that scrupulously attends to the legal rights of all parties, as well as to the practicalities involved in conducting an investigation and grievance resolution. In addition, Schneider (1987) and Connolly and Marshall (1989) discuss various aspects of procedures from a legal perspective, and Remick, et al. (1990) provide guidance from the administrative point of view. In general, institutions should keep in mind the following principles.

1. Procedures should be designed in such a way that reporting is encouraged. It is sometimes difficult for colleges

and universities to recognize that receiving a number of complaints of sexual harassment indicates that their program is effective. Given the nature of sexual harassment, it is natural for institutions to be troubled when a number of students or employees report that they are being exploited, demeaned or in other ways harassed by other members of the academic community. However, given that there is no reason to believe that any institution is immune to this problem, lack of student complaints is no reason for self-congratulation. Rather, it probably implies that the procedures for making such complaints are unknown, unclear or ineffective.

On a practical level, this principle means that colleges and universities should identify, train, and publicize the existence of persons whom students and employees can feel comfortable contacting concerning problems they are having with sexual harassment. Although each campus culture is different, it seems reasonable to suggest that multiple avenues should be open for students to access the grievance system. Experience suggests that female contact persons are viewed more positively by complainants. However, both male and female individuals should be available for complainants, as male victims do exist, and it is likely that victims will find it easier to discuss their experiences with someone of the same sex. Students should be encouraged to talk with whomever they feel most comfortable; it is critical that they be offered a procedure that does not require them to go through an official of their department, to confront the harasser personally before making a complaint, or to sign a formal statement before any resolution procedure can be initiated. Likewise, faculty or staff should have access to an official outside the normal academic hierarchy within their department or college.

2. Both formal and informal procedures should be available. Informal observation, formal research, and common sense all confirm that students or employers will use informal complaint mechanisms, but that they are reluctant to sign formal complaints (Meek & Lynch, 1983). Unfortunately, many institutions make the mistake of assuming that there is nothing to be done unless they are presented with a written, signed statement. Yet, the law is very clear that institutions are liable for sexual harassment of which they have knowledge, whether the student signs a formal complaint or not. As Remick, et al. (1990) point out "Should a person refuse to sign a statement, then later sue, claiming that the institution knew of the situation but did nothing to keep it from continuing, the institution would be hard pressed to say that it has a policy on the issue, knew of this complaint, but did not act because their procedures for formal complaints were not exactly followed" (p. 196).

These authors argue that legal requirements do not rule out informal actions. They differentiate between formal and informal procedures, not by whether there is a signed complaint, but rather by the outcome and whether there is an investigation. Whether or not there is a written statement, informal complaints are not actually investigated, nor do they result in formal disciplinary measures. The alleged harasser may agree to apologize, change his behavior, reverse an educational decision made about the complainant, or even accept actions such as leaves of absence, counseling, demotions or resignation—all without formal disciplinary procedures being invoked. Care should be taken to ensure due process in both informal and formal hearings or investigations. A formal procedure requires a complaint that is written out and signed and an investigation into the facts, and results in formal disciplinary action if the complaint is supported.

In general, informal procedures are sufficient when the harasser agrees that the incident(s) alleged did take place—although he may offer a different interpretation, or even be surprised and embarrassed that his behavior was considered offensive. If the professor denies that the behavior occurred, then a formal process—including an investigation—will need to be initiated if the situation is to be resolved. A formal process is also indicated if there have been previous complaints against the professor, or if the behavior is particularly serious or severe. Thus, informal procedures are designed to be educational, whereas formal procedures are more legal in nature. Individuals experienced in the area of harassment agree that the overwhelming majority of complaints can be resolved informally and that students generally do not wish to pursue action against a faculty member. Rather, they simply want the behavior to stop and to continue their education undisturbed.

3. Procedures should be appropriate and accessible for faculty and staff as well as students. Most discussions of sexual harassment in the university focus on the difficulties experienced by female students. But, as we have seen, women who are employed in academia are at least equally, if not more, at risk than their student counterparts. It is important that universities design and publicize their policies and procedures in such a way that they are accessible and appropriate for faculty and staff as well as students. In practice, this likely requires—among other things—that multiple channels be available for reporting. Universities like other organizations have well-developed institutional subcultures, and the nuances of life in academia suggest that a woman carpenter or custodian may not see a faculty committee as particularly relevant or helpful. Similarly, the Affirmative Action Office, situated

outside the traditional academic hierarchy, may not be seen as an appropriate resource by women faculty. Finally, the emphasis on harassment of students common to most university brochures and informational posters often creates the appearance that institutional priorities and programs are not concerned with faculty and staff.

A particularly well-designed program that specifically addresses these concerns is that of the University of Illinois, whose informational brochure clearly designates separate resource offices for students, faculty and staff. As an additional alternative, the office of the University Ombudsman serves as a resource for any member of the campus community. The narrative makes clear that campus policies apply to both students and employees, and the brochure includes a wide range of relevant examples. Materials such as these insure that institutional programs and resources are available to all individuals who need them.

4. Publicize policies and procedures widely. The strongest policies and most carefully designed procedures will be ineffective unless the university community is familiar with and educated about them. Over the last several years, institutions have developed a number of effective methods for educating faculty and students about sexual harassment. One of the most effective is to develop and distribute a brochure outlining the institutional policy. Brochures should include the university's definition of sexual harassment, a strong statement that such behavior is illegal, unprofessional and will not be tolerated, and information concerning whom to contact for advice, information, or to make a complaint. In addition, many institutions publish their policies in the schedule of classes, as well as in the course catalogue. Articles in the student newspaper have been found to be very effective for raising the issue and educating the campus community.

One of the most effective educational strategies is to offer workshops for faculty and staff. These require an initial investment of time and money, but are ultimately well worth the cost. Robertson, et al. (1988) indicated that 64 percent of institutions responding to a survey item concerning educational methods had instituted workshops. Those institutions reported that they were among the most effective strategies available. Many schools have made such workshops mandatory, particularly for staff and administrators. For educating students, guest lectures and presentations in classes and student meetings are generally considered very successful.

To be effective, schools should use multiple methods of publicity and education. Robertson, et al. found that the average number of methods used was 5.3 for those using any

method, with large schools using more. Additionally, it is important for the education program to be ongoing. Students are a transient group, new faculty and staff arrive every year, post-doctoral fellows come for a year or two and then move on, and policies as well as the names and phone numbers of ombudsmen change. Thus, brochures should be distributed every year and updated periodically. Articles in the newspaper should be published on an annual basis, and workshops should be made available regularly. To be successful in eradicating sexual harassment requires that institutions make an authentic and substantial commitment to the process. Symbolic gestures, one-shot programs and other cosmetic devices are ineffective and, worse, generate cynicism among the campus community concerning the administration's intentions and commitment.

5. Publicize statistics on harassment complaints and their outcomes. To be effective, policies and procedures must have credibility within the campus community. Students and faculty need to be made aware that complaints are taken seriously, handled expeditiously, and treated fairly by the institution. In addition to developing credibility for the university's efforts, such a procedure serves as a deterrent as it gives public notice that the institution will take action.

The American Council on Education (1989), strongly recommends such reporting procedures as part of its guidelines for developing effective campus programs. One of the leaders in this area has been the University of Minnesota, which has developed a useful format for such reporting. Complaints of harassment are identified by the status of the complainant and respondent, the date and nature of the complaint, and the date and nature of the outcome. (Names are not used.) Formal and informal complaints are reported separately, and summary statistics for all complaints and inquiries are reported as well. Examples of the Minnesota report can be found in Cole (1990).

6. Publicize institutional support for preventive and remedial programs. Finally, and most importantly, the central administration should take a strong and public stand in support of institutional efforts to eradicate sexual harassment. All institutions reporting successful sexual harassment programs indicate that strong support from the top administration was critical to their success (Robertson, et al., 1988). In addition, it is extremely helpful to have the support of the union, Faculty Senate or a similar governance body that has credibility with faculty members.

Summary

The American Council on Education (ACE, 1989), in its policy statement concerning campus sexual harassment policy and educational programs, suggested that effective programs contain the following elements:

1. **A basic definition** of sexual harassment;
2. **A strong policy statement** indicating that it will not be tolerated;
3. **Effective information channels** for informing the university about the campus policy;
4. **Effective educational programs** designed to help all members of the campus community to recognize and discourage sexual harassment; and
5. **An accessible grievance procedure** that offers multiple methods of initiating complaints, procedures to protect the rights of all individuals involved, and prompt investigation and resolution of grievances.

ACE notes that "Each institution has the obligation, for moral as well as legal reasons, to develop policies, procedures and programs that protect students and employees from sexual harassment and to establish an environment in which such unacceptable behavior will not be tolerated" (ACE, 1989).

Chapter 6.
Consensual Amorous Relationships

"Sexual relationships between a faculty member and a student currently enrolled in the faculty member's course, or under supervision or direction of the faculty members, are unprofessional." Faculty Handbook, *section II-A-3 "Prohibition of Sexual Harassment", San Diego State University*

As the issue of sexual harassment has become widely recognized as a serious social problem, some universities have gone beyond establishing prohibitions against the more commonly recognized problems and developed policies addressing what have come to be known as consensual relationships — situations where women students "willingly" enter into a sexual relationship with a professor (see Appendix C). In this context, "willing" is taken to imply the absence of bribery, coercion or any form of threat or inducement whether direct or subtle.

Keller (1988) provides an extensive analysis of such policies from a legal perspective. She argues that the constitutional right to privacy, grounded in the penumbra of various constitutional amendments, protects consensual relationships between faculty and students at public institutions. She notes, however, that "(this right) is not absolute. As with any constitutionally guaranteed individual right, compelling state interest permits certain infringements of that right. Laws which limit the fundamental freedoms of an individual must serve a compelling state interest and also must be narrowly drawn to serve only that interest. *The context of an educational institution may reveal such a compelling interest*" (pp. 33-34).

After reviewing relevant case law, Keller concludes that faculty-student relations within the "zone of instruction" — when the student is in the professor's class, when he is her thesis director, or in some supervisory capacity — can legitimately be prohibited on the grounds that the element of coercion can never be completely eliminated when the faculty member has such power over the student. She notes that such associations "carry the presumption of coercion and render the consensual nature of the relationships suspect. . . .the university may legitimately proscribe all such associations" (p. 40).

If, however, the faculty member does not supervise the student in any way, the institution has no basis to question her consent, nor would any favoritism be implied. Thus, according

to Keller, the state has no compelling interest that would justify such a prohibition. She proposes a "bright line" test for determining when a university may legitimately prohibit faculty-student relationships: "namely, when the faculty member academically supervises the student. Intimate consensual relationships falling outside the instructional context are constitutionally protected from university interference" (p. 41).

At first reading, Keller's logic seems compelling. But readers familiar with life in academia will realize immediately that the bright line she proposes is neither as bright nor definitive as she would have us believe. Even with respect to strictly formal power, any professor will realize that he does not have to directly teach, supervise or advise a student to be able to influence or even determine her fate, for good or ill. This is particularly true within the somewhat intimate confines of graduate departments where a professor may not academically supervise a student in any way and have no authority over her, and yet still be in a position of authority. *But what Keller's analysis ignores is that there are many forms of power, and the professor has them all — whether he acknowledges it or not, or even wishes to or not.* It is a fact of life that all of us in academia recognize if we are truthful, but often wish or choose to ignore. Although there may certainly be cases where the professor and student are so far professionally removed from one another that his power is minimal or trivial, Keller's bright line distinction will not serve to identify them.

Zalk, Paludi and Dederich (1990) offer a thoughtful analysis of the psychological power differentials inherent in any faculty-student relationship. Unlike the argument offered above, their analysis seems particularly suited for illuminating the situation of undergraduate women who become involved with professors. They write:

> *The bases of the faculty member's almost absolute power are varied, and range from the entirely rational into broad areas of fantasy. Professors give grades, write recommendations for graduate schools, awards and the like, and can predispose colleague's attitudes toward students. But it goes beyond that.*
>
> *Knowledge and wisdom are power — particularly in the academy, the setting within which the student must effectively operate. While superior knowledge, and thus presumably greater wisdom, are often ascribed to faculty members by society at large, the students' adolescent idealism exaggerates its extent. The knowledge and experience ascribed to age add to this source of power. The extension of the power of knowledge is often made into*

the realm of values and students often accept, uncritically, as true or right what the professor espouses (Stimpson, 1988).

It is easy to see how this imbalance of power exacerbates the vulnerability of all students. One can also understand what a heady experience it is for the student who is singled out as "special" by a professor" (p. 109-110).

As a practical matter, universities that have consensual relationship statements have tended to incorporate Keller's distinction between supervisory and non–supervisory academic relationships. For example, the strongest policy to date on consensual relationships is that of the University of Iowa (See Appendix C), which states "*No faculty member shall have an amorous relationship (consensual or otherwise) with a student who is enrolled in a course being taught by the faculty member or whose academic work (including work as a teaching assistant) is being supervised by the faculty member.*" In a further section on consensual relationships outside the instructional context, the policy goes on to say that such relationships can lead to great difficulties, particularly when the individuals are in the same or related departments. It cites problems with appearances of favoritism, possible conflicts of interest, and so forth.

Other statements, although not formally proscribing such relationships, indicate that they are generally inappropriate or problematic. The University of Wisconsin, Illinois, Pennsylvania, and Harvard, among others, have policies of this sort. Most of these policies also point out that if subsequent charges of harassment are brought, they will be extremely difficult to defend.

Summary and Recommendations

As our knowledge and understanding of the dynamics of sexual harassment have developed and expanded, so too have the policy statements designed to address it. Currently, colleges and universities are beginning to confront the difficult legal, moral, and ethical issues raised by apparently consensual sexual relationships between faculty and students.

Although history and custom have traditionally inhibited institutions from formally proscribing such relationships, such prohibitions are both advisable and legally defensible, at least within the instructional context broadly defined. The courts have ruled that faculty have no right to "exploit students for personal gain" whatever the student's consent may or may not have been (*Korf v. Ball State University*, 1984), and universities themselves should do no less.

Chapter 7. Conclusion

"Perhaps the most important factor in reducing sexual harassment is an organizational culture that promotes equal opportunities for women" (Riger, 1991). Over the last decade, the educational community has begun to acknowledge both the reality of sexual harassment and the threat that it poses to the integrity of the academic process. Research on the topic has moved from a disconnected series of studies toward a unified body of knowledge, bringing with it a beginning understanding of the ways in which women have been disenfranchised and victimized within the academic community. The process of understanding has been slow and often painful, as the realities we have been forced to confront strike at the heart of our self-definition and espoused values.

This booklet was undertaken as an attempt to further this process of self-examination and to provide some of the resources necessary for this undertaking. We have seen that, although the issues are not simple, neither are they as intractable as some would make them out to be. Despite the concerns that are occasionally voiced, vigorous programs to combat sexual harassment pose no threat to academic freedom. On the contrary, they insure that such freedom is accorded all members of the educational community; and to frame the problem in these terms is to risk committing a grave error. Casting the issue as a clash between the rights of the student to be free from intimidation and intrusion versus those of the faculty member to say what he pleases and associate with whom he will is to pose the wrong question. Rather, it seems more appropriate to cast the discussion in terms of responsibility — responsibility to our students, to the standards of our ethics as scholars, and to the university community as a whole. From this perspective, it verges on the grotesque to argue the acceptability of such behavior, whatever one's rights may or may not be. In this sense, putting an end to sexual and gender harassment poses a challenge to the morality of the entire academic enterprise. Whether we will meet that challenge remains to be seen.

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Appendix A.
Definitions of Five Types of Sexual Harassment Identified by Till (1980)

Type 1: Gender Harassment

Generalized sexist remarks and behavior; not designed to elicit sexual cooperation, but that express hostile, insulting, or degrading attitudes about women.

Type 2: Seductive Behavior

Inappropriate and offensive, but essentially sanction-free behavior; that is, there is no penalty attached to noncompliance.

Type 3: Sexual Bribery

Solicitation of sexual activity or other sex-linked behavior by promise of rewards.

Type 4: Sexual Coercion

Coercion of sexual activity by threat of punishment.

Type 5: Sexual Imposition or Assault

Gross sexual imposition (i.e., touching, fondling, grabbing) or assault.

Appendix B
Sexual Experiences Questionnaire
(f1-Revised)

On the following pages, you will find a series of questions requesting information about many different kinds of experiences that occur on a college campus between faculty and students. For purposes of this survey, faculty includes professors, instructors, TAs and so forth. Please note that we are interested in your experiences as a college student, either graduate or undergraduate, and whether or not these experiences occurred at your current campus or somewhere else.

Please answer as honestly as you can. Remember that all information collected in a research study is completely confidential, and your privacy is completely protected. Thank you for your assistance with this important project.

Demographic Data

1. Race:
   - ☐ Asian-American
   - ☐ Black
   - ☐ Hispanic-American
   - ☐ White
   - ☐ Other (Please specify)_____

2. Age:_____

3. Year:
   - ☐ Freshman
   - ☐ Sophomore
   - ☐ Junior
   - ☐ Senior
   - ☐ Graduate Student

4. Major:_____

You may now turn the page and begin. ——➤

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Sexual Experiences Questionnaire

Instructions: For each item, please check the number that most clearly describes your own experiences. Some questions have three parts. If you check 1 in Part A, please skip to the next item. If you check 2 or 3, please answer Parts B and C. Remember, you are being asked to describe your experiences with MALE professors, instructors and TA's.

1–1 a. Have you ever been in a situation where a professor or instructor habitually told suggestive stories or offensive jokes?

□ 1 Never □ 2 Once □ 3 More than Once

b. In an average week about, how frequently does this occur?

1 . . . 2 . . . 3 . . . 4 . . . 5 . . . 6 . . . 7
Rarely Occasionally Frequently

c. How much did this situation bother you?

1 . . . 2 . . . 3 . . . 4 . . . 5 . . . 6 . . . 7
Not at All I was not offended | Some what: I was some what offended | Very much: I was very offended

1–2 a. Have you ever been in a situation where a professor or instructor made crudely sexual remarks, either publicly in class, or to you privately?

□ 1 Never □ 2 Once □ 3 More than Once

b. In an average week about, how frequently does this occur?

1 . . . 2 . . . 3 . . . 4 . . . 5 . . . 6 . . . 7
Rarely Occasionally Frequently

1–3 a. Have you ever been in a sitution where a professor or instructor made seductive remarks about your appearace, body, or sexual activities?

□ 1 Never □ 2 Once □ 3 More than Once

b. In an average week, how frequently does this occur?

1 . . . 2 . . . 3 . . . 4 . . . 5 . . . 6 . . . 7
Rarely Occasionally Frequently

1–4 a. Have you ever been in a situation where a professor was staring, leering, or ogling you in a way that was inappropriate, or that made you uncomfortable?

☐ 1 Never ☐ 2 Once ☐ 3 More than Once

b. In an average week how frequently, does this occur?

1 . . . 2 . . . 3 . . . 4 . . . 5 . . . 6 . . . 7
Rarely Occasionally Frequently

1–5 a. Other than in classes on human sexuality or similar topics, have you ever been in a class where the instructor used sexist or suggestive teaching materials (e.g., pictures, stories, pornography)?

☐ 1 Never ☐ 2 Once ☐ 3 More than Once

b. In an average week about, how frequently does this occur?

1 . . . 2 . . . 3 . . . 4 . . . 5 . . . 6 . . . 7
Rarely Occasionally Frequently

1–6 a. Have you ever been in a situation where a professor frequently treated you "differently" because you were female (i.e., favored the male students)?

☐ 1 Never ☐ 2 Once ☐ 3 More than Once

b. In an average week, how frequently does this occur?

1 . . . 2 . . . 3 . . . 4 . . . 5 . . . 6 . . . 7
Rarely Occasionally Frequently

1–7 a. Have you ever been in a situation where the instructor made sexist remarks (e.g., suggesting that traditionally masculine fields like engineering are inappropriate for women, or that there must be something "wrong" with men who want to be nurses)?

□ 1 Never □ 2 Once □ 3 More than Once

b. In an average week about, how frequently does this occur?

1 . . . 2 . . . 3 . . . 4 . . . 5 . . . 6 . . . 7
Rarely Occasionally Frequently

2–1 a. Have you ever been in a situation where a professor or instructor made unwanted attempts to draw you into a discussion of personal or sexual matters (e.g., attempted to discuss or comment on your sex life)?

□ 1 Never □ 2 Once □ 3 More than Once

b. In an average week about, how frequently does this occur?

1 . . . 2 . . . 3 . . . 4 . . . 5 . . . 6 . . . 7
Rarely Occasionally Frequently

2–2 a. Have you ever been in a situation where a professor or instructor engaged in what you considered seductive behavior towards you (e.g., made flattering or suggestive remarks, asked you for a date, suggested that you "get together" for a drink, offered to give you a back rub)?

□ 1 Never □ 2 Once □ 3 More than Once

b. In an average week about, how frequently does this occur?

1 . . . 2 . . . 3 . . . 4 . . . 5 . . . 6 . . . 7
Rarely Occasionally Frequently

2–3 a. Have you ever been in a situation where you received unwanted sexual attention from a professor or instructor?

□ 1 Never □ 2 Once □ 3 More than Once

b. In an average week, about how frequently does this occur?

1 . . . 2 . . . 3 . . . 4 . . . 5 . . . 6 . . . 7
Rarely Occasionaly Frequently

2–4 a. Have you ever been in a situation where a professor or instructor attempted to establish a romantic sexual relationship with you?

□ 1 Never □ 2 Once □ 3 More than Once

b. In an average week, about how frequently does this occur?

1 . . . 2 . . . 3 . . . 4 . . . 5 . . . 6 . . . 7
Rarely Occasionaly Frequently

c. How much did this situation bother you?

1 . . . 2 . . . 3 . . . 4 . . . 5 . . . 6 . . . 7
Not at All I was not offended — Some what: I was some what offended — Very much: I was very offended

2–5 a. Has a professor or instructor ever "propositioned" you?

□ 1 Never □ 2 Once □ 3 More than Once

b. In an average week about how frequently does this occur?

1 . . . 2 . . . 3 . . . 4 . . . 5 . . . 6 . . . 7
Rarely Occasionally Frequently

c. How much did this situation bother you?

1 . . . 2 . . . 3 . . . 4 . . . 5 . . . 6 . . . 7
Not at All I was not offended — Some what: I was some what offended — Very much: I was very offended

3–1. Have you ever felt that you were being subtly bribed with some sort of reward (e.g., good grades, preferential treatment) to engage in sexual behavior with a professor or instructor?

☐ 1 Never ☐ 2 Once ☐ 3 More than Once

3–2. Have you ever been in a situation where a professor or instructor directly offered you some sort of reward for being sexually cooperative?

☐ 1 Never ☐ 2 Once ☐ 3 More than Once

3–3. Have you ever engaged in sexual behavior you did not want to engage in because of such promises or rewards?

☐ 1 Never ☐ 2 Once ☐ 3 More than Once

4–1. Have you ever felt that you were being subtly threatened with some sort of "punishment" for not being sexually cooperative with a professor or instructor (e.g., lowering your grade, failing an exam, etc.)?

☐ 1 Never ☐ 2 Once ☐ 3 More than Once

4–2. Have you ever been directly threatened or pressured to engage in sexual activity by threats of punishment or retaliation?

☐ 1 Never ☐ 2 Once ☐ 3 More than Once

4–3. Have you ever been in a situation where you actually experienced some negative consequences for refusing to engage in sexual activity with a professor or instructor?

☐ 1 Never ☐ 2 Once ☐ 3 More than Once

4–4. Have you ever engaged in a sexual behavior that you did not want to engage in because of such threats or fear of punishment?

☐ 1 Never ☐ 2 Once ☐ 3 More than Once

5–1 a. Have you ever been in a situation where a professor or instructor deliberately touched you (e.g., laid a hand on your bare arm, or put an arm around your shoulders) in a way that made you feel uncomfortable?

□ 1 Never □ 2 Once □ 3 More than Once

b. In an average week, about how frequently does this occur?

1 . . . 2 . . . 3 . . . 4 . . . 5 . . . 6 . . . 7
Rarely Occasionally Frequently

c. How much did this situation bother you?

1 . . . 2 . . . 3 . . . 4 . . . 5 . . . 6 . . . 7
Not at All I was not offended | Some what: I was some what offended | Very much: I was very offended

5–2 a. Have you ever been in a situation where a professor or instructor made unwanted attempts to touch or fondle you (e.g., stroking your leg or neck, touching your breast, and so forth)?

□ 1 Never □ 2 Once □ 3 More than Once

5–3 a. Have you ever been in a situation where a professor or instructor made forceful attempts to touch, fondle, kiss, or grab you?

□ 1 Never □ 2 Once □ 3 More than Once

5–4 a. Have you ever been in a situation where a professor made unwanted attempts to have sexual intercourse with you that resulted in your crying, pleading, or physically struggling?

□ 1 Never □ 2 Once □ 3 More than Once

5–5 a. Have you ever been in a situation where a professor or instructor used force (squeezing your wrist, twisting your arms, holding you down, etc.) to have intercourse with you?

□ 1 Never □ 2 Once □ 3 More than Once

5–6 a. Have you ever been sexually harassed by a professor or instructor?

□ 1 Never □ 2 Once □ 3 More than Once

b. In an average week about, how frequently does this occur?

1 . . . 2 . . . 3 . . . 4 . . . 5 . . . 6 . . . 7
Rarely Occasionally Frequently

Thank you for your participation in our research. This is your space. Please use it to give us your reactions to the study, to tell us more about you and your experiences, or anything else you would like. Thank you again for your help.

Appendix C.
Campus Sexual Harassment Policies: Consensual Relations

Several universities were selected which have instituted policies on consensual relations as part of their sexual harassment policies. They are the Minnesota State University System, the San Diego State University, University of Iowa, and the University of Wisconsin, Madison

We have included only those sections of the policies that address the issue of consenting relations. For a complete set of policies please write the campus directly.

MINNESOTA STATE UNIVERSITY SYSTEM

Office of the Chancellor, 1986

Subd. 3. Consent–Many instances of sexual harassment occur in situations where there is a superior/subordinate relationship between the parties, such as between administrators and faculty or staff, faculty and staff, staff and students, and faculty and students. A University employee who enters into a sexual relationship with a student or a subordinate where a professional power relationship exists must realize that, if a charge of sexual harassment is subsequently made, the student or subordinate may assert that the relationship was not one of mutual or voluntary consent. (adopted by the State University Board on May 29, 1986.)

SAN DIEGO STATE UNIVERSITY

II-A-3 PROHIBITION OF SEXUAL HARASSMENT

Adopted by the Senate October 11, 1983, with amendments

3.0 . . . Definition of Sexual Harassment . . .

Sexual relationships between a faculty member and a student currently enrolled in the faculty member's course, or under supervision or direction of the faculty member, are unprofessional.

Sexual relationships between superior and subordinate are ill-advised insofar as they may adversely affect the workplace relationship and environment.

THE UNIVERSITY OF IOWA

POLICY ON SEXUAL HARASSMENT AND CONSENSUAL RELATIONSHIPS

Division 1. Sexual Harassment

Division 2. Consensual Relationships

Section 5. DEFINITION.

As used in this division, the terms faculty or faculty member mean all those who teach at the University and include graduate students with teaching responsibilities and other instructional personnel.

Section 6. RATIONALE.

(a) The University's educational mission is promoted by professionalism in faculty-student relationships. Professionalism is fostered by an atmosphere of mutual trust and respect. Actions of faculty members and students that harm this atmosphere undermine professionalism and hinder fulfillment of the University's educational mission. Trust and respect are diminished when those in positions of authority abuse or appear to abuse their power. Those who abuse or appear to abuse their power in such a context violate their duty to the University community.

(b) Faculty members exercise power over students, whether in giving them praise or criticism, evaluating them, making recommendations for their further studies or their future employment, or conferring any other benefits on them. Amorous relationships between faculty members and students are wrong when the faculty member has professional responsibility for the student. Such situations greatly increase the chances that the faculty member will abuse his or her power and sexually exploit the student. Voluntary consent by the student in such a relationship is suspect, given the fundamentally asymmetric nature of the relationship. Moreover, other students and faculty may be affected by such unprofessional behavior because it places the faculty member in a position to favor or advance one student's interest at the expense of others and implicitly makes obtaining benefits contingent on amorous or sexual favors. Therefore, the University will view it as unethical if faculty members engage in amorous relations with students enrolled in their classes or subject to their supervision, even when both parties appear to have consented to the relationship.

Section 7. CONSENSUAL RELATIONSHIPS IN THE INSTRUCTIONAL CONTEXT.

No faculty member shall have an amorous relationship (consensual or otherwise) with a student who is enrolled in a course being taught by the faculty member or whose academic

work (including work as a teaching assistant) is being supervised by the faculty member.

Section 8. CONSENSUAL RELATIONSHIPS OUTSIDE THE INSTRUCTIONAL CONTEXT.

Amorous relationships between faculty members and students occurring outside the instructional context may lead to difficulties. Particularly when the faculty member and student are in the same academic unit or in units that are academically allied, relationships that the parties view as consensual may appear to others to be exploitative. Further, in such situations (and others that cannot be anticipated), the faculty member may face serious conflicts of interest and should be careful to distance himself or herself from any decisions that may reward or penalize the student involved. A faculty member who fails to withdraw from participation in activities or decisions that may reward or penalize a student with whom the faculty member has or has had an amorous relationship will be deemed to have violated his or her ethical obligation to the student, to other students, to colleagues, and to the University.

UNIVERSITY OF WISCONSIN-MADISON

STATEMENT ON CONSENSUAL RELATIONSHIPS

September, 1987

Developed by the Sexual Harassment Policy Committee in consultation with the Academic Staff Committee and the University Committee. Endorsed and issued by the Acting Chancellor.

CONSENSUAL RELATIONSHIPS that are of concern to the UW-Madison are those amorous, romantic or sexual relationships in which both parties appear to have consented, but where there is a definite power differential between the two parties.

Consenting romantic and sexual relationships between instructor (meaning all who teach at the University—faculty members, academic staff instructional personnel, and graduate students with teaching or tutorial responsibilities) and student (meaning any person studying with the instructor); between supervisor (meaning any person in position of authority over another—to hire and fire, to grant raises and oversee task performance) and employee (meaning any person working for the supervisor); and between employee and student (where there is an instructional or an employment relationship between them) have the potential for extremely serious consequences and ought to be avoided. Codes of ethics for most professional associations forbid professional–client sexual rela-

tionships, the relationships enumerated above should be viewed in this context. In the case of instructor and student, for example, the respect and trust accorded the instructor by the student, as well as the power exercised by the instructor in giving grades, thesis advice, evaluations, recommendations for further study and future employment, greatly diminish the student's actual freedom of choice concerning an amorous or sexual relationship.

It is a generally accepted ethical principle in our society, reflected in the University's nepotism policy, that one avoids situations in which one makes official evaluations of relatives, family members, spouses, or other persons with whom one has an intimate relationship. Such a relationship combined with a responsibility for evaluation is considered a "conflict of interest." In a university, examples of such evaluations are the assignment of grades, and participation in decisions to hire, retain, promote, or determine salaries. If a close relationship with emotional ties should develop between an instructor and a student, or between a supervisor and an employee, or between an employee and student, University personnel policy requires the instructor to report the matter immediately to the department chair; a teaching assistant, to the professor in charge of the course; a supervisor to his/her supervisor; an employee to his/her supervisor, so that suitable arrangements can be made for the objective evaluation of the student, employee, or prospective employee.

All instructors, supervisors and other employees should understand that there are substantial risks in even an apparently consenting relationship where a power differential exists. Even if the conflict of interest issues are resolved, charges of sexual harassment or violation of the University's nepotism policy may develop, even when both parties have consented to the relationship. An instructor's or supervisor's liability protection under Wisconsin statues may not apply to protect the individual in subsequent litigation arising out of the relationship's effect on the student or employee. It is the instructor, supervisor, or other employee who, by virtue of his or her special power and responsibility, will bear a special burden of accountability.

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Appendix D.
Sexual Harassment-NEA's Position

According to its resolution, "Sexual Harassment," NEA "believes that sexual harassment is a form of sex discrimination or abuse." NEA encourages affiliates to work with local school districts and institutions of higher education to establish strong policies against sexual harassment, to develop educational programs that are designed to prevent and combat sexual harassment, and to develop and publicize a grievance procedure that encourages the reporting and prompt resolution of complaints of sexual harassment.

In addition, NEA has formulated and circulated strong policy guidelines to protect its own employees from sexual harassment.

What can my local Association do to combat and prevent sexual harassment?

- See that management circulates its written policy on sexual harassment to all employees.
- See that the institution offers training in sexual harassment awareness to its managerial staff. The institution should train all staff to recognize sexual harassment, to help victims of sexual harassment, and to avoid harassment of colleagues and subordinates.
- Monitor management's response to the need to eliminate sexual harassment.
- Ask members and management if sexual harassment is an issue in their workplace, whether or not it has already been publicly identified as a problem there. Address the issue before it becomes a problem.
- Be prepared to represent victims of sexual harassment. Members should know that their Association can understand and deal with this issue.
- Conduct workshops on sexual harassment to teach victims their rights and to help all members identify sexual harassment.
- Include a provision about sexual harassment in the Association's contract with the institution.

- Include articles about sexual harassment in the Association publication. Publicity and the clear signal that neither the Association nor management will tolerate any form of sexual harassment are the best means of eliminating it from the workplace.

What should an individual victim do?

- Tell the harasser that you dislike the activity and expect it to stop.
- Keep a written record of all harassing acts.
- Tell your colleagues about the problem so they can observe and, if necessary, corroborate your claims.
- Ask your Association to help you resolve the problem.
- Make sure that management is aware that you have been sexually harassed.

What should an individual victim NOT do?

- *Don't* ignore the harassment. Ignoring it will only encourage the harasser and possibly hurt the case in the future.
- *Don't* delay in trying to address the problem.
- *Don't* blame yourself. You are the victim. Blame the harasser instead. Harassment reflects on the character and ethics of the harasser, not on you.
- *Don't* be embarrassed to share the problem with your co-workers and your Association. Frequently, when the individual steps forward to complain, many others who were too embarrassed to raise the issue before concede that they share the problem. To end the harassment, you must first identify it.
- *Don't* resign. Seek the help of your Association in combatting harassment. Remember, you are not the one who is failing to adhere to proper workplace behavior; the harasser is at fault.

Is preventive medicine the best cure for sexual harassment?

Yes. The Equal Employment Opportunity Commission's Title VII guidelines on sexual harassment support prevention activities as follows:

> *Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.*

Employers should work actively to stop sexual harassment in the workplace. Ignorance is no protection, for employers may be liable for incidents of sexual harassment whether or not they knew of them. Those employers who have taken an active stand against sexual harassment and who have good institutional policies and procedures against it may lower their risk of liability.

Associations should also combat and prevent sexual harassment. Local Associations should tell employers to eliminate sexual harassment and then monitor the employers' response. Sexual harassment is not an ill with which Associations must, or should, learn to live.

And you should work against sexual harassment. You are valuable—as an individual person, as an education employee, and as a role model for young people. Don't let sexual harassment stop you from being and doing your best.

nea

National Education Association
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